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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 BANK OF NEW YORK MELLON,

8 Plaintiff,

9 v.

10 MERIDIAN PRIVATE RESIDENCES  
11 HOMEOWNERS ASSOCIATION; INVEST  
VEGAS, LLC,

12 Defendants.

Case No. 2:17-cv-02097-RFB-PAL

**ORDER**

13  
14 Before the Court comes Plaintiff Bank of New York Mellon (“Plaintiff”)’s Motion for  
15 Default Judgment against Defendant Invest Vegas, LLC (“Defendant”). (ECF No. 19). This  
16 Defendant has not responded to the motion and has not appeared in this action despite being served  
17 on October 31, 2017. (ECF No. 12). A Clerk’s Entry of Default was entered against Defendant on  
18 November 21, 2017. (ECF No. 15).

19 The granting of a default judgment is a two-step process directed by Rule 55 of the Federal  
20 Rules of Civil Procedure. Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). The first step is  
21 an entry of default, which must be made by the clerk following a showing, by affidavit or  
22 otherwise, that the party against whom the judgment is sought “has failed to plead or otherwise  
23 defend.” Fed. R. Civ. P. 55(a). The second step is entry of a default judgment under Rule 55(b), a  
24 decision which lies within the discretion of the court. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th  
25 Cir. 1980). Factors which a court, in its discretion, may consider in deciding whether to grant a  
26 default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of the  
27 substantive claims, (3) the sufficiency of the complaint, (4) the amount of money at stake, (5) the  
28 possibility of a dispute of material fact, (6) whether the default was due to excusable neglect, and

1 (7) the Federal Rules' strong policy in favor of deciding cases on the merits. Eitel, 782 F.2d at  
2 1471-72. If an entry of default is made, the court accepts all well-pleaded factual allegations in the  
3 complaint as true; however, conclusions of law and allegations of fact that are not well-pleaded  
4 will not be deemed admitted by the defaulted party. DirecTV, Inc. v. Hoa Huynh, 503 F.3d 847,  
5 854 (9th Cir. 2007).

6 The Court finds that the Eitel factors favor default judgment against Defendant. Plaintiff  
7 would be prejudiced in its ability to assert a quiet title claim against Defendant, as default judgment  
8 is the only means available given this Defendant's failure to appear. The Court also finds that  
9 Plaintiff sufficiently pleads that its Deed of Trust attaches to the property, and the Court also finds  
10 that the real property at stake merits default judgment. While there remains a possibility of a  
11 dispute of material fact, Defendant has failed to present any disputes. The Court does not find that  
12 there are any indications that Defendant's defaults were due to excusable neglect. Here, these  
13 factors outweigh the strong policy in favor of deciding cases on the merits.

14 Plaintiff does not seek an award of monetary damages or attorneys' fees and costs, but  
15 rather requests the Court declare that Defendant purchased the property at issue subject to  
16 Plaintiff's senior Deed of Trust. The Court now makes such declaration. By granting this relief,  
17 the Court does not address the substantive claims raised by Plaintiff in its Complaint.

18 Therefore, **IT IS ORDERED** that Plaintiff's Motion for Default Judgment (ECF No. 19)  
19 is GRANTED. The Clerk of Court is instructed to enter judgment in favor of Plaintiff as follows:

20 The certain Deed of Trust, recorded as instrument number 20060330-0000474 (the  
21 "Deed of Trust") in the Official Records of the Clark County Recorder's Office (the  
22 "Official Records") on March 30, 2006 on title to real property known as 230 East  
23 Flamingo Road Unit 205, Las Vegas, Nevada 89169; APN 162-16-810-343  
(hereinafter "Property") remains a valid and enforceable lien on title to the  
24 Property, and Defendant purchased the Property subject to Plaintiff's Deed of Trust.

25 Plaintiff may proceed with foreclosure of its Deed of Trust pursuant to Nevada law.

26 This judgment may be recorded in the Official Records to provide record, inquiry,  
27 and constructive notice to the world of Plaintiff's secured interest in the Property.  
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1           **IT IS FURTHER ORDERED** that, in light of the Order Granting the Stipulation of  
2 Dismissal as to Defendant Meridian Private Residences Homeowners Association (ECF No. 22),  
3 the Motion to Dismiss filed by Meridian Private Residences Homeowners Association (ECF No.  
4 9) is DENIED AS MOOT.

5           The Clerk of Court is further instructed to enter judgment accordingly and to close this  
6 case.

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8           DATED: August 8, 2018.



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9           **RICHARD F. BOULWARE, II**  
10           **United States District Judge**